

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

FILED/ACCEPTED

FEB 8 - 2012

Federal Communications Commission  
Office of the Secretary

In re	)	
	)	
<b>MARITIME COMMUNICATIONS/LAND</b>	)	EB Docket No. 11-71
<b>MOBILE, LLC</b>	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of	)	
Various Authorizations in the Wireless Radio	)	
Services	)	
	)	
Applicant for Modification of Various	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028, 0004193328,
	)	0004354053, 0004309872, 0004310060,
Applicant with <b>ENCANA OIL AND GAS (USA),</b>	)	0004314903, 0004315013, 0004430505,
<b>INC.; DUQUESNE LIGHT COMPANY; DCP</b>	)	0004417199, 0004419431, 0004422320,
<b>MIDSTREAM, LP; JACKSON COUNTY</b>	)	0004422329, 0004507921, 0004153701,
<b>RURAL MEMBERSHIP ELECTRIC</b>	)	0004526264, 0004636537,
<b>COOPERATIVE; PUGET SOUND ENERGY,</b>	)	and 0004604962
<b>INC.; ENBRIDGE ENERGY COMPANY,</b>	)	
<b>INC.; INTERSTATE POWER AND LIGHT</b>	)	
<b>COMPANY; WISCONSIN POWER AND</b>	)	
<b>LIGHT COMPANY; DIXIE ELECTRIC</b>	)	
<b>MEMBERSHIP CORPORATION, INC.;</b>	)	
<b>ATLAS PIPELINE – MID CONTINENT, LLC;</b>	)	
<b>DENTON COUNTY ELECTRIC</b>	)	
<b>COOPERATIVE, INC., DBA COSERV</b>	)	
<b>ELECTRIC; AND SOUTHERN CALIFORNIA</b>	)	
<b>REGIONAL RAIL AUTHORITY</b>	)	

To: Marlene H. Dortch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S**  
**COMMENTS ON MARITIME'S STATUS REPORT ON DISCOVERY AND**  
**REQUEST FOR PARTIAL EXTENSION OF TIME**

1. By Order, FCC 12M-7 (ALJ, rel. Jan. 27, 2012), the Presiding Judge directed Maritime to respond fully and completely by February 6, 2012, to the "Joint Request for the Production of Documents to Maritime Relating to the Construction and Discontinuance of Site-

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Based Operations” filed by the Enforcement Bureau (Bureau) and SkyTel<sup>1</sup> on December 7, 2011. On the very day it was required to produce the subject documents, Maritime not only requested an extension of the Presiding Judge’s deadline,<sup>2</sup> but also suggested a process for the production of its documents that unnecessarily will lead to confusion in the record. As the Bureau explained to Maritime in discussions that preceded the filing of the instant Extension Request, the Bureau does not oppose Maritime’s request for a short extension to produce its documents. Rather, the Bureau opposes Maritime’s proposed method of such production as discussed below.<sup>3</sup>

2. Maritime concedes that it has arranged to have its original 12 boxes of paper documents electronically scanned.<sup>4</sup> Notably, however, Maritime fails to disclose that as part of this electronic scanning process, it also is having the documents sequentially-numbered.<sup>5</sup> Yet, instead of producing or agreeing to produce to the Bureau the electronic files containing the scanned, sequentially-numbered documents from which the Bureau (and other parties) can efficiently make copies, Maritime is offering merely to provide the 12 boxes of unnumbered, original paper documents after it is finished with them.<sup>6</sup> Such stonewalling makes no sense. It

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<sup>1</sup> “SkyTel” refers to Warren Havens, V2G, LLC, Telesaurus Holdings GB, Verde Systems, Intelligent Transportation & Monitoring Wireless, Environmental, LLC and Skybridge Spectrum Foundation.

<sup>2</sup> See Maritime’s Status Report on Discovery and Request for Partial Extension of Time, filed February 6, 2012 (Extension Request). As the Presiding Judge is well-aware, this is not the first time Maritime has asked for an extension of a deadline in this proceeding. Indeed, the Presiding Judge previously observed that, “Maritime’s repeated tardiness followed by the requests for more time based on questionable justifications, approaches the line of an abuse of the Commission’s process and rules of practice, to the detriment of the numerous parties involved in this case, the Presiding Judge and the OALJ.” See Order, FCC 11M-33 (ALJ, Nov. 8, 2011).

<sup>3</sup> The Bureau acknowledges that by Order, FCC 12M-8 (ALJ, rel. Feb. 7, 2012), the Presiding Judge issued an “interim” ruling on the Extension Request. The Bureau construes “interim” as meaning subject to such information as may come to the Presiding Judge’s attention in the form of a responsive pleading, such as the Bureau’s instant Opposition.

<sup>4</sup> See Request at 3-4.

<sup>5</sup> The sequential numbers are frequently referred to as “Bates” numbers or “Bates” stamps.

<sup>6</sup> See Request at 5.

unnecessarily imposes upon the Bureau the burden of repeating what Maritime has already done – disassembling a dozen boxes of records (removing clips and staples, organizing legal and other sized papers, etc.), scanning each document, and most importantly, numbering them. Moreover, having various parties (Maritime, the Bureau, and SkyTel among others) separately imprint their own individual page numbers on the same documents raises the very real possibility of different versions of the same documents being introduced into the record because they bear multiple – *and different* – Bates numbers. Such a result would necessarily confuse the record.

3. All parties with an interest in the subject records should have an *identical copy of each document* to which they can refer during depositions and at trial and which they can place into the record. Each document should have one –and only one – Bates number appended to it to ensure that the record is clear when reference is made to that particular document. Maritime has or will have by Monday, February 13, 2012, in its possession, custody, and control such a set of documents in electronic form with Bates numbers that it created of its own volition. It should be required to produce that set to the Bureau for immediate copying. To do otherwise would be inconsistent with its obligations as a party in this hearing proceeding and at odds with the spirit of cooperation to which Maritime committed itself at the most recent prehearing conference in this case.

4. Producing records in response to a legitimate document request in an FCC adjudicatory hearing is neither new nor novel nor extraordinary. It is, in fact, a routine practice that is fundamental to the Bureau's ability to carry out its obligations to prosecute this case in the public interest. Maritime's failure or refusal to produce a set of sequentially-numbered documents that is, or will be within just a few days, in its possession, custody, and control

frustrates the Bureau's objectives in this case, is an affront to the Presiding Judge's prior discovery ruling, and is inconsistent with the Commission's orderly hearing processes.

5. Accordingly, the Bureau respectfully requests the Presiding Judge to issue an order compelling Maritime to provide to the Bureau, no later than 12:00 noon on Tuesday, February 14, 2012, a complete set of documents that have been sequentially numbered by Maritime, in electronic format on a disk, from which the Bureau can expeditiously make its own copies.<sup>7</sup> Should Maritime refuse or otherwise fail to comply fully and completely, the Bureau respectfully requests that the Presiding Judge schedule a further prehearing conference to discuss Maritime's dilatory tactics and any adverse inferences that may be drawn therefrom.

Respectfully submitted,  
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Chief, Enforcement Bureau



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February 8, 2012

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<sup>7</sup> The Presiding Judge's interim Order requires Maritime to produce to the Bureau by close of business on February 8, 2012 "sufficiently identified and numbered copies of all documents contained in 'box of documents' . . . that have been in possession of Maritime's counsel at all relevant times." See Order, FCC 12M-8 (ALJ, rel. Feb. 7, 2012) at 2. The Bureau does not seek alternative relief concerning the production of this "box of documents."



## **CERTIFICATE OF SERVICE**

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 8th day of February, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S COMMENTS ON MARITIME'S STATUS REPORT ON DISCOVERY AND REQUEST FOR PARTIAL EXTENSION OF TIME" to:

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